

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

GEVON RAMON DAVIS,

Defendant-Appellee.

UNPUBLISHED

November 25, 2003

No. 242207

Genesee Circuit Court

LC No. 02-009635-FH

Before: Cooper, P.J., and Markey and Meter, JJ.

PER CURIAM.

The prosecutor appeals as of right from a circuit court order granting defendant's motion to quash on double jeopardy grounds. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In August 2001, defendant either stole a car or received possession of the vehicle which had been stolen by someone else. He drove the vehicle to Kentucky, where he was apprehended and charged with theft by unlawful taking or disposition over \$300. Ky Rev Stat Ann 514.030. Defendant pled guilty to an added charge of attempted theft by unlawful taking and was sentenced to one year in jail. Defendant was charged in Michigan with unlawfully driving away a motor vehicle, MCL 750.413, or receiving and concealing stolen property over \$1,000 and under \$20,000, MCL 750.535(3)(a). These charges stem from the same event that led to the criminal proceedings in Kentucky.

The trial court held that under the rule governing successive prosecutions in different jurisdictions enunciated in *People v Cooper*, 398 Mich 450, 460-461; 247 NW2d 866 (1976), prosecution in this state violated the constitutional prohibition against double jeopardy. The prosecutor does not take issue with that ruling per se. He contends only that this Court should take the opportunity to follow *People v Mezy*, 453 Mich 269, 280-281; 551 NW2d 389 (1996), in which three Justices voted to overrule *Cooper*.

Although Justice Cavanagh has opined that *Cooper's* continuing validity is suspect, *People v Hermiz*, 462 Mich 71, 87; 611 NW2d 783 (2000), it is still the law. See *People v Mackle*, 241 Mich App 583, 594; 617 NW2d 339 (2000). "While the Court of Appeals may properly express its belief that a decision of [the Supreme] Court was wrongly decided or is no longer viable," *Boyd v W G Wade Shows*, 443 Mich 515, 523; 505 NW2d 544 (1993), "a

decision of the majority of justices of the Michigan Supreme Court is binding on lower courts[,]” including this Court. *People v Beasley*, 239 Mich App 548, 559; 609 NW2d 581 (2000).

Affirmed.

/s/ Jessica R. Cooper

/s/ Jane E. Markey

/s/ Patrick M. Meter